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REPLY COMMENTS OF AT&T ON THE ALTERNATE PROPOSED DECISION ISSUED JUNE 22, 2016

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AT&T[1] hereby submits its reply to comments on the June 22, 2016 Alternate Proposed Decision ("APD") of Commissioner Sandoval.

I. The Commission Should Not Adopt the APD's Proposed Rural Outage Reporting Requirements.

As several commenters correctly observe, the APD's proposed rural outage reporting requirements lack support in the record, are not necessary, and threaten to impose unnecessary costs and burdens on carriers in light of the FCC's pending, active consideration of rural outage reporting standards. As CCTA (at 12-13), Cox (at 13-14), and the Small LECs (at 5-6) point out, there is no evidence in the record that additional outage reporting requirements are needed, and the APD fails to make adequately supported findings to support the creation of such new requirements. There have been no prior comments, workshops, or other review of the APD's proposed 75,000-user-minute threshold, and instead that proposal appears plucked from thin air.

The Joint Consumers (at 2-3), ORA (at 1), and CWA (at 1-2) agree with the adoption of the rural reporting requirements, but none provides the support that the APD so clearly lacks. The Joint Consumers simply assert (at 3) that it is "appropriate[]" to "offer[] a mechanism to address concerns about outages in communities that do not reach NORS standards," as if the details – including feasibility and the burdens of the proposed mechanism – do not matter. ORA similarly asserts (at 1) that the proposed reporting threshold is "appropriate" for rural areas, without further explanation. ORA does, however, propose a novel solution to the lack of record support for the APD's rural outage reporting proposal – namely, ORA proposes that the Commission simply make up facts, and "find" that lowering the threshold to 75,000 user-minutes "will not overextend outage reporting capabilities" and will "still maintain[] an efficient and effective reporting system." ORA Comments at A-1, A-2. But Commission findings should (and by law must) be based on the record, not made from whole cloth.

As Frontier notes (at 2, 5-6), extensive reporting requirements necessarily divert a carrier's focus and resources from repairing outages to filing reports. The FCC adopted its 900,000-user-minute threshold in recognition of the need to balance the desire for accurate reporting of outages in all areas while avoiding imposing undue burdens on carriers. Presumably the FCC will similarly strike an appropriate balance when it releases its order regarding rural outage reporting. The APD, however, makes no attempt to engage in such balancing, because the record is devoid of evidence that would

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support it. Among other things, as Verizon Wireless explains (at 13-14), the APD fails to consider whether its proposed regulation is even workable, as network providers do not segregate their networks into rural and non-rural areas as the APD would define them. Cox correctly points out (at 14) the APD's assertion that the Census Bureau data could be used to determine rural areas had no record basis. This only reinforces the conclusion that the Commission should await the FCC's ruling, consistent with the Commission's prior finding that it should conform its outage reporting requirements to the FCC's. D.09-07-019, p. 64. *See also* CTIA Comments at 12-14 (explaining why the Commission should await finalization of the FCC's rulemaking).

In the event the Commission nevertheless adopts a rural outage reporting requirement, AT&T agrees with the modifications proposed by the Small LECs (at 6-7). Among other things, the Commission must give carriers adequate time to develop procedures to comply with the new reporting obligations.

II. There Is No Basis to Impose Service Quality Standards on Wireless and VoIP Providers.

AT&T also agrees with the several other commenters who explain why there is no factual or legal basis to adopt a new phase of the proceeding to address wireless and VoIP service quality standards. As CCTA (at 13-15), Cox (at 9-13), and Frontier (at 4-7) explain, the Commission cannot lawfully impose service quality standards, or outage reporting requirements, upon interconnected VoIP providers. Similarly, as Verizon Wireless (at 11-13) and CTIA (at 8-10) explain, the Commission cannot lawfully impose such requirements upon wireless carriers. As a result, initiating a second phase of the proceeding would be pointless.

In addition, even if there were a lawful basis for such regulation (though there is not), it would make for poor policy. Both VoIP and wireless services are highly competitive, and imposing new service quality standards upon such providers would be unwarranted and counterproductive. *See, e.g.*, Verizon Wireless Comments at 1-10; CTIA Comments at 4-8. CWA wrongly suggests (at 5) that subjecting VoIP and wireless services to the "same service quality protections" that apply to traditional wireline telephone services would be "forward-thinking," when precisely the opposite is true: subjecting these advanced, competitive technologies to legacy telephone regulation would be backward-looking. The Joint Consumers (at 1-2) and ORA (at 1, 3) invoke the mantra of "technology neutral" regulation, but if that were a panacea then horses and bicycles would come with airbags. Pretending that different technologies are the same is not "technology neutral."

ORA goes a step further, and proposes changes to the APD to immediately impose service quality standards upon VoIP and wireless providers. With respect to VoIP providers, ORA seizes upon

the APD's (incorrect) statement that the Commission's authority under § 710(f) to "monitor and discuss" VoIP services means the Commission can require VoIP providers to provide outage reports, and ORA suggests (at 2-3) that the APD fails to reflect that the Commission is imposing the full panoply of service quality regulations upon VoIP providers. But the latter plainly is not what the APD intends to do. Imposing actual service quality measures upon VoIP providers – *i.e.*, setting service quality standards they are required by regulation to meet – indisputably goes far beyond the mere "monitoring" of VoIP services.

III. There Is No Record Support to Expand Application of Installation Intervals or Report Answer Time by Type of Call.

ORA also asserts (at 3-4) there is no basis to exclude non-GRC carriers from the installation interval and installation commitment standards in light of AT&T and Verizon "consistently failing to meet other service quality standards." However, in D.09-07-019 (at 40), the Commission properly determined "there is no need to require installation interval reporting for URF ILECs and CLECs" in light of competitive conditions and the fact that ILECs had met the metric. Nothing in the record of this proceeding supports revisiting that conclusion. In addition, ORA's argument is premised upon the assumption – contradicted by the record – that AT&T's and Verizon's failure to meet the OOS metric reflects inadequate service quality, rather than a flawed metric. Finally, while ORA complains about AT&T's and Verizon's failure to meet the OOS metric, ORA's proposed "solution" is to revise GO 133-D to state that the service quality rules apply to *all* "telephone corporations," including wireless and interconnected VoIP providers. *See* ORA Comments at A-2, A-3. AT&T's and Verizon's failure to satisfy the flawed OOS metric provides no support for the conclusion that service quality regulations should be extended to wireless and VoIP providers.

Finally, while the Joint Consumers (at 3) support a requirement that carriers compile answer time reporting by type of call (billing, non-billing, inquiries and trouble reports), they fail to identify sufficient record support for such a requirement – because there is none. Requiring carriers to compile such information would be costly and extremely burdensome, and there is no record support for the conclusion that the additional data to be reported would be useful in any significant way, much less worth these extra costs.

IV. The APD Suffers From All the Same Flaws as the PD.

A. The APD Fails to Take Into Account the Network Evaluation Study.

The APD is premature because the network evaluation study, for which funds have been budgeted, has not been completed. As Frontier notes (at 3-4), one principal purpose of that study is to help inform the Commission on what service quality standards should be adopted. The Joint Consumers

assert (at 6) that "[t]he APD [s]hould [a]ddress the [s]tatus of the [n]etwork [s]tudy and a [p]lan to [i]ncorporate [i]ts [f]indings." They concede the network study is important, and that the Commission should take into account its findings. They do not, and cannot, square this concession with their position that the Commission should adopt new service quality regulations even before the network study is complete. At a minimum, any metrics and fines should be made interim, pending reevaluation after the network study.

B. The GO 133-C Metrics Are Unsound and Should Be Modified or Eliminated, Not Augmented with Automatic Penalties.

As several commenters note, the APD is fatally flawed because there are inadequate findings and conclusions to support the re-adoption of the existing service quality metrics and the adoption of a new penalty mechanism. *See, e.g.*, Frontier Comments at 1-2; Consolidated Comments at 2-3. The Joint Consumers incorrectly assert (at 1) that the APD "more accurately reflects and analyses [*sic*]" Staff's proposal "while also addressing party input." In fact, the APD (like the PD) fails to give sufficient consideration to whether the standards remain appropriate, ignores the hundreds of pages of comments and expert declarations "that demonstrate the current metrics are inappropriate and unreasonable," and instead simply "assumes, with no analysis, that the existing standards are appropriate." Frontier Comments at 3. Moreover, as Consolidated observes (at 2), "there is no factual foundation for the implicit rationale that penalties will lead to improved service quality."

ORA and the Joint Consumers support the APD's adoption of a fine structure, and the Joint Consumers even propose (at 5) that it be increased such that a carrier that fails to meet a standard for three consecutive months must pay fines for all three months. But they ignore that, as AT&T and others have repeatedly pointed out, there is no persuasive rationale or record support for concluding that the current GO 133-C standards are appropriate service quality measures that should be augmented by automatic penalty provisions of any kind.

C. Calculation of Any Fines and Penalties Imposed Should Reflect the Proper Scale of Customer Impact and Actual Carrier Performance.

As a threshold matter, AT&T agrees with Cox that the proposed fines are excessive, lack factual or legal support, and hence should not be adopted. Cox Comments at 5-8. However, to the extent the proposed penalties are adopted, AT&T agrees with Frontier that the penalty mechanism should be scaled to take into account (a) the extent of a service quality metric "miss," and (b) the declining number of access lines. *See* Frontier Comments at 7-9. As Frontier (at 7-8) and Cox (at 7) correctly explain, it makes no sense to assess the same penalty whether a carrier achieves, *e.g.*, 89% of repairs within 24 hours, or just 60%. Frontier also correctly explains (at 8-9) that base fines should be reduced annually in

proportion to the overall reduction in total access lines. AT&T also agrees with Frontier that the Commission or Staff should retain the ability to waive or reduce any fine for good cause.

Finally, AT&T agrees with Frontier that the new and different reporting obligations imposed by the APD – including the exclusion of large business customers, providing unadjusted OOS results, proving additional information on catastrophic events, providing raw data including zip codes, and reporting on refunds – are costly and unnecessary. Frontier Comments at 9. The APD gives no consideration to the costs and difficulties of implementing these reporting obligations. At a minimum, if these new requirements are adopted then carriers should be given until at least July 1, 2017 to implement them, as Frontier proposes.

New reporting requirements leave no stated justification and thus cannot be adopted. Frontier (at 9) correctly identifies a number of changes to reporting requirements that are costly and would take time to implement. There is no analysis of the need for such changes and thus no identification of any record basis for such changes. These changes cannot be made without such an analysis and identification of the need for such changes.

V. Miscellaneous

Cox correctly points out (at 15) that text in draft GO 133-D needs to be updated to reflect the APD's conclusions regarding OOS metrics based on adjusted results, and the definition of "customer." In addition, AT&T agrees with Cox that in the event the Commission approves the APD, carriers should have at least six months to implement the changes.

VI. Conclusion

The Commission should not adopt the APD. Rather, service quality metrics for the URF ILECs should be eliminated, or at a minimum the Commission should await the results of the network evaluation study before modifying or adopting new service quality regulations.

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Respectfully submitted,

/s/

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